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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte GEORGE HOSHI, TSUNEYUKI OKABE,
KENICHI GOSHIMA, HIDEO KOBAYASHI, AKINORI NAGAYA,
MICHIO YAMAJI, KAZUHIRO YOSHIKAWA, and YUJI KAWANO

Appeal 2009-012022
Application 09/893,522
Technology Center 3700

Before JOHN C. KERINS, MICHAEL W. O'NEILL, and
FRED A. SILVERBERG, *Administrative Patent Judges*.

O'NEILL, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

George Hoshi et al. (Appellants) appeal under 35 U.S.C. § 134 from the Examiner's decision rejecting claims 1 and 35/1 under 35 U.S.C. § 102(b) as being anticipated by Johnson (US 6,076,543, issued Jun. 20, 2000), claims 1-4, 35/2, 35/3, 35/4, 37-42, and 44-48 under 35 U.S.C. § 103(a) as being unpatentable over Johnson and Itoh (US 6,152,175, issued

Nov. 28, 2000), and claims 36 and 43 as being unpatentable over Johnson, Itoh, and Markulec (US 6,231,260 B1, issued May 15, 2001). Appellant's counsel presented oral argument on June 14, 2011. We have jurisdiction under 35 U.S.C. § 6(b). We REVERSE.

The Invention

The claims on appeal relate to a fluid control device for use in a semiconductor manufacturing apparatus.

Claim 1, reproduced below, is illustrative of the subject matter on appeal.

> A fluid control device wherein
>
> a plurality of lines each comprise a plurality of fluid controllers arranged at an upper level and a plurality of coupling members arranged at a lower level,
>
> the plurality of lines being arranged in parallel on a base member and having inlets directed in the same direction, with outlets thereof facing toward the same direction,
>
> the fluid control device being characterized in that the base member has at least one orthogonal rail extending in a direction orthogonal to the line and each line is mounted on a respective line supporting rail of a plurality of line supporting rails,
>
> each line supporting rail being slidably mounted on the at least one orthogonal rail relative to other of said line supporting rails,
>
> each line supporting rail, when slidably mounted, being slidable in a direction orthogonal to the line along the at least one orthogonal rail,
>
> the plurality of coupling members being slidably mounted on the line supporting rail in a manner in which each line supporting rail is

slidably mounted on the at least one orthogonal rail.

The Rejections

The Examiner finds that Johnson, in an unillustrated embodiment, discloses that a set of gas sticks are adjustably mounted on a pair of rails that are coupled between adjacent stanchions. Given this disclosure, the Examiner asserts that the claimed limitations of at least each line supporting rail being slidably mounted on the at least one orthogonal rail relative to the other of said line supporting rails and each line supporting rail, when slidably mounted, being slidable in a direction orthogonal to the line along the at least one orthogonal rail as called for in claims 1-4 and 35 is satisfied by the Johnson disclosure. (Ans. 4-5).

Contentions

Appellants contend that the aforementioned claim limitations are neither explicitly nor inherently encompassed by Johnson's unillustrated embodiment. *See* App. Br. 13-16.

OPINION

Issue

The determinative issue in this appeal is:

Whether claimed limitations of at least each line supporting rail being slidably mounted on the at least one orthogonal rail relative to other of said line supporting rails each line supporting rail, when slidably mounted, being slidable in a direction orthogonal to the line along the at least one orthogonal

rail as called for in claims 1-4 and 35 encompass Johnson's unillustrated embodiment.

Pertinent Facts

Johnson discloses that if the inventive gas handling devices 40 were to be used with inert or non-hazardous gas, the gas handling devices would not need to be housed in an externally vented enclosure as depicted in figures 10 and 11. Instead, the gas handling devices would be adjustably mounted on a pair of rails or supports that are coupled between adjacent stanchions 116. Each rail or support would extend transversely to the longitudinal axis of each track 42 within each gas handling device 40. Each rail or support includes a mount or bolt which extends from the rail or support for insertion through slots 71 located at the distal end of the each track 42. Col. 12, lines 18-28 and Figure 3.

Principles of Law

To establish anticipation, every element and limitation of the claimed invention must be found in a single prior art reference, arranged as in the claim. *Karsten Mfg. Corp. v. Cleveland Golf Co.*, 242 F.3d 1376, 1383 (Fed. Cir. 2001).

Analysis

Anticipation based on Johnson

Johnson does disclose, without providing any illustration, at least one rail that is orthogonal to the line supporting rails as set forth in the claims. However, Johnson does not disclose by a preponderance of the evidence that the unillustrated rail permits a line supporting rail to be slidably mounted, relative to other line supporting rails, in a direction orthogonal to the unillustrated rail. The Examiner's explanation in the Answer fails to address

how a gas handling device disclosed in Johnson would be slidably mounted on the unillustrated rail via a mount or bolt relative to any other gas handling device as required in order to satisfy the claimed limitations of at least each line supporting rail being slidably mounted on the at least one orthogonal rail relative to other of said line supporting rails and each line supporting rail, when slidably mounted, being slidable in a direction orthogonal to the line along the at least one orthogonal rail. While Johnson does disclose that the gas handling device is adjustably mounted, the Examiner does not explain how "adjustably" encompasses "slidably." As such, every element and limitation, as arranged in the claimed manner, is not found within Johnson.

Based on the foregoing, we are constrained not to sustain the Examiner's anticipation rejection.

Obviousness based on Johnson, Itoh, and Markulec

Since the Examiner does not use Itoh and Markulec to remedy the deficiency argued by Appellants, we are likewise constrained to reverse the obviousness rejections as articulated by the Examiner within the Answer.

CONCLUSION

The claimed limitations of at least each line supporting rail being slidably mounted on the at least one orthogonal rail relative to other of said line supporting rails, each line supporting rail, when slidably mounted, being slidable in a direction orthogonal to the line along the at least one orthogonal rail as called for in claims 1-4 and 35 do not encompass Johnson's unillustrated embodiment.

DECISION

The Examiner's decision to reject claims 1 and 35/1 under 35 U.S.C. § 102(b) as being anticipated by Johnson, claims 1-4, 35/2, 35/3, 35/4, 37-42, and 44-48 under 35 U.S.C. § 103(a) as being unpatentable over Johnson and Itoh, and claims 36 and 43 as being unpatentable over Johnson, Itoh, and Markulec is reversed.

REVERSED

Klh